

**TOWNES AT AUTUMN OAKS
ZMAP 2005-0038
DRAFT PROFFER STATEMENT**

October 29, 2007

Pursuant to Section 15.2-2303, Code of Virginia (1950), as amended, and Section 6-1209 of the Revised 1993 Loudoun County Zoning Ordinance, as amended (the "Zoning Ordinance"), Loudoun Reserve L.C., the owner of the property described as MCPI # 034-40-3610, 034-40-6958, 034-39-9485, 034-39-8861, and 034-30-2448 and Smith Loudoun L.C., the owner of the property described as 034-40-8307 (combined, the above referenced parcels shall hereinafter be referenced as the "Property"), (the two above referenced owners collectively referred to as "Applicant"), on behalf of itself and its successors in interest, hereby voluntarily proffers that the development of the Property subject to ZMAP 2005-0038 shall be in substantial conformity with the proffers as set forth below.

All proffers made herein are contingent upon approval of (i) ZMAP 2005-0038 and the rezoning of the Property to the Planned Development – Housing 6 ("PD-H6") zoning classification under the Zoning Ordinance, including the requested modification of Sections 3-509(C), 4-102, 4-109(C) and 4-109(E) of the Zoning Ordinance (provided at Exhibit A), and (ii) the Concept Development Plan.

I. CONCEPT DEVELOPMENT PLAN

The development of the Property shall be in substantial conformity with the Concept Development Plan (included by reference as Exhibit B), identified as Sheets 1, 3, 5, and 6 of The Townes at Autumn Oaks Zoning Map Amendment Plan dated June, 2006 as revised through October 25, 2007, prepared by Urban Engineering & Associates, Inc. (the "Concept Development Plan"). Minor adjustments to the locations of the proposed uses, facilities and improvements shown on the Concept Development Plan ("CDP") shall be permitted to address grading, drainage, environmental, cultural and natural features, development ordinance requirements, and other final engineering considerations, and to accommodate the recommendations of archaeological studies. Development of the Property will comply with the Affordable Dwelling Unit ("ADU") regulations of the Zoning Ordinance. A total of 23 ADUs will be provided among the single family attached units.

II. DEVELOPMENT SCOPE

Development of the Property will include a maximum of 179 single-family attached residential units with associated community facilities and amenities. The Property will be developed using public water and sewer with such facilities provided to the Property at no cost to the County or to the Loudoun County Sanitation Authority. The Applicant will abandon all existing wells and drainfields on the Property.

III. RECREATIONAL AMENITIES AND SIDEWALKS

The Applicant shall provide active and passive recreational amenities, including two (2) tot lots, a trail network, and sidewalks within the Property, as shown on the CDP, with the construction of all such items to be done in conjunction with the development of the adjacent residential areas and the construction of the internal streets and necessary infrastructure. The Applicant shall also construct a covered picnic pavilion prior to the issuance of the 90th residential zoning permit for the Property. The picnic pavilion shall be located within the Community Green shown on the CDP.

The Applicant shall provide a minimum of 35,700 square feet of active recreation space at the Property. Said active recreation space shall include two (2) tot lots with age-appropriate recreational equipment (such as, but not limited to, swings, a swing set, a slide and/or a see-saw) and a play field in the area shown on the CDP. Said play field shall be a minimum of 26,000 square feet, graded and seeded for active play and provided prior to the issuance of the 90th residential zoning permit for the Property.

The Applicant shall use raised boardwalks over Wetlands and Waters of the U.S. as part of the proposed trail network, subject to the approval of the County and U.S. Army Corps of Engineers/Virginia Department of Environmental Quality.

IV. CAPITAL FACILITIES

The Applicant shall make a one-time, per unit capital facilities contribution of \$19,614.23 (that is, a maximum total of \$3,510,948 calculated based on a \$29,709 capital facility contribution for each market rate single family attached unit minus a base density credit of \$1,123,656). The contribution shall be paid prior to the issuance of each residential zoning permit. The Board of Supervisors may allocate said contribution at its discretion.

V. EMERGENCY SERVICES

Prior to the issuance of each residential zoning permit, a one-time contribution of \$120.00 per unit for each residential unit shall be paid to the County for distribution by the County to the primary volunteer fire and rescue companies providing service to the Property. Said contribution shall escalate on a yearly basis from the base year of 1988 and change effective each January 1 thereafter, based on the Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor, for the Washington-Baltimore, MD-VA-DC-WV Consolidated Metropolitan Statistical Area (the "CPI"). For the purpose of this Section, a residential unit includes each single family attached dwelling unit, excluding any approved accessory unit. Contributions pursuant to this paragraph shall be divided equally between the primary servicing fire and rescue companies providing service to the Property. Notwithstanding the foregoing, at such time as the primary fire and/or rescue services to the Property are no longer provided by incorporated volunteer companies, the obligation to make the contributions listed within this paragraph shall cease. The intent of these provisions is to support a volunteer fire and rescue system so long as a volunteer system is the primary provider of fire and rescue services to the Property. If only one of these services ceases to be provided by a volunteer company, then the contribution shall be halved and shall continue to be provided to the

remaining volunteer company.

VI. TRANSPORTATION

A. Route 824/ Oakgrove Road Improvements

1. Subject to the granting of any necessary off-site right-of-way or easements, the Applicant shall widen the south bound lane of Route 824/ Oakgrove Road between the point where the road has been previously widened and Route 606. Said improvements are shown on Exhibit C, prepared by Urban Ltd. and dated October 26, 2007.

2. Subject to the granting of any necessary off-site right-of-way or easements, the Applicant shall extend the length of the existing turn lane from east bound Route 606 onto Route 824/ Oakgrove Road. These improvements are shown on Exhibit C.

3. The Applicant shall make good faith efforts to acquire off-site right-of-way and/or easements necessary for the widening of Route 824/ Oakgrove Road proffered herein. Where right-of-way and/or easements necessary for proffered road improvements cannot be obtained despite such good faith efforts, either (i) voluntarily through donation or proffer to the County, or (ii) through purchase by the Applicant at a good faith reasonable price, the Applicant shall request that the County acquire such right-of-way and/or easements by appropriate eminent domain proceedings by the County, with all costs associated with the eminent domain proceedings to be borne by the Applicant, including, but not limited to, land acquisition costs. The initiation of such eminent domain proceedings is solely at the discretion of the County.

4. The cost of acquiring off-site easements and construction of the improvements detailed in this Proffer VI.A. shall completed be in lieu of any regional road contributions.

5. Subject to the granting of any necessary off-site easements, the Applicant shall bond the road improvements described in this Proffer VI.A., prior to the issuance of the 100th residential zoning permit at the Property.

6. If any necessary off-site right-of-way or easements cannot be acquired by the Applicant and the County chooses not to exercise its right of eminent domain, the Applicant shall be released from the obligations to acquire such right-of-way and released from the obligations of Proffers VI.A. In such case, then in lieu of such proffered obligations, and so as not to delay development at the Property, Applicant shall make per-unit regional road contributions at the time of issuance of the remaining zoning permits in an amount equal to:

- a. \$4,800 per residential unit, multiplied by
- b. 179 residential units, minus
- c. the costs expended by the Applicant in completing such portion of the improvements outlined in Proffers VI.A that Applicant can or desires to complete without

receipt of such off-site right-of-way and/or easements necessary for proffered road improvements (as substantiated by actual invoices), the sum of which to be divided by

d. the number of residential zoning permits yet to be issued (that is 179 units minus the number of residential zoning permits received as of such date).

B. Transit Capital Costs Contribution

The Applicant shall make a on-time contribution of \$500.00 per unit to the County to be used at the discretion of the Board of Supervisors for the purchase of transit buses, for other transit-related capital projects, or for regional transportation improvements in the Suburban Policy Area, as defined in the Revised General Plan. This contribution shall be made prior to the issuance of each residential zoning permit.

C. Construction and Improvements by Others

In the event that any improvement described in VI.A above is constructed and paid for by others, the Applicant shall contribute to Loudoun County \$859,200 (that is, \$4,800 per residential unit) in lieu of the payment of regional road contributions. Such contribution shall be paid to Loudoun County at the time the Applicant's obligation to bond such road improvements would have occurred under the terms of these Proffers.

VII. ENVIRONMENT

A. Tree Conservation and Tree Protection

1. The Applicant shall establish tree conservation areas in the locations shown on Sheets 5 and 7 of the CDP as "Tree Conservation Area." Clearing in these areas shall be permitted only for the construction of utility crossings, wetland mitigation, storm water management facilities, best management practices, low impact design facilities and trail crossings and any such clearing shall be limited to the minimum area required for said construction.

2. A minimum of eighty (80) percent of the canopy within the cumulative Tree Conservation Area depicted on the CDP will be preserved, exclusive of stands of Virginia Pine. In the event that the eighty (80) percent canopy threshold cannot be achieved within the designated Tree Conservation Areas, such lost canopy will be recaptured elsewhere onsite in locations to be designated at the discretion of the Applicant in consultation with the County. Boundaries of all Tree Conservation Areas shall be delineated on the record plat recorded for each section of the development. Construction plans shall clearly define the limits of the Tree Conservation Area and all such areas shall be clearly marked in the field. Tree protection fencing shall be placed outside the drip lines along the Tree Conservation Area prior to commencing land-disturbing activities. The Applicant reserves the right to remove, in consultation with the County, any dead, damaged, dying or diseased trees and vegetation, and any tree or vegetation that interferes with construction, proper functioning and/or use of any utility or drainage easement, interferes with clearing and grading for road and trail construction or creates a danger to property or persons.

3. If, during construction on the Property, it is determined by the Applicant's certified arborist and/or the County Urban Forester that any healthy tree located within the boundaries of any of the Tree Conservation Areas described in this Proffer has been damaged during construction and will not survive, then the Applicant shall remove each such tree and replace each such tree with two (2) 2½ - 3 inch caliper native, non-invasive deciduous trees. The species and placement of replacement trees shall be proximate to the area of each such damaged tree so removed, or in another area determined in consultation between the Applicant and the County Urban Forester.

4. The HOA documents shall include a provision that prohibits removal of trees in Tree Conservation Areas, as shown on the record plat, after construction has been completed by the Applicant without specific permission of the County Urban Forester except as necessary to accommodate Forest Management Techniques, performed by or recommended by a professional forester or certified arborist, that are necessary to protect or enhance the viability of the canopy. Such Management Techniques may include, without limitation, pruning and the removal of vines, invasive species, trees uprooted or damaged by extreme weather conditions, and trees or limbs that are diseased, insect-infested, dead, or are considered a hazard to life or property. The HOA documents shall clearly state that such provisions prohibiting tree removal shall not be amended by the Applicant or the HOA without written approval from the County. The record plat for each portion of the Property containing a Tree Conservation Area shall contain a note stating that the removal of trees within a Tree Conservation Area is prohibited except in accordance with the Declaration of Covenants.

B. Wetlands Mitigation

For any wetland and stream impacts on the Property determined to be unavoidable in conjunction with the permitting process, Applicant shall provide wetland mitigation in the following priority order: 1) onsite, 2) within the same planning policy area, and 3) within Loudoun County, subject to approval of the Army Corps of Engineers and the Virginia Department of Environmental Quality. If no such areas are available within the County as verified by County Staff, Applicant shall be permitted to provide wetland mitigation outside of Loudoun County.

C. Geographic Information System Information

The Applicant will provide any digital data it has in its possession to the County for the Property's approved wetland delineation concurrent with the approval of the first preliminary plat.

VIII. HOMEOWNERS ASSOCIATION

A. HOA General Responsibilities

All property owners at the Property shall be members of the Homeowners Association ("HOA") established to regulate use and provide standards for the construction, landscaping and

use of privately owned land and structures within the Property. The HOA shall provide landscaping and lawn maintenance for all common areas and snow removal on all private streets, and shall contract for trash removal services. The HOA shall be responsible for the maintenance of all common recreational facilities and buildings, all stormwater management facilities, all private streets, and all sidewalks not otherwise maintained by the Virginia Department of Transportation ("VDOT").

B. Establishment of HOA

Prior to the approval of the first residential record plat at the Property, draft documents for the establishment of the HOA or for the annexing of the Property into an existing HOA shall be submitted to the County for review and approval. The HOA shall be established prior to the approval of the first residential record plat or residential construction plans and profiles for the Property, whichever is first in time. The option to be included within an existing community's HOA must be exercised, if at all, prior to the approval of the first residential record plat, or site plan, whichever is first in time, for the Property.

C. Inclusion in Existing HOA

In the event the Property is annexed into and made subject to an existing community's HOA prior to the approval of the first residential record plat or residential construction plans and profiles for the Property, whichever is first in time, there shall be no requirement to establish a new HOA for the Property, as described above. In this event, the applicable documents for such inclusion of the Property in the existing community's HOA shall incorporate the HOA responsibilities set forth in paragraph A above and shall be submitted to the County for review and approval prior to approval of the first record plat or site plan for the Property, whichever is first in time.

D. Quarry Notification Overlay District

HOA documents shall require all property owners whose units lie in the quarry notification overlay district (shown on the CDP) to sign a disclosure to acknowledge that their property lies within an area that may be impacted by quarry operations and blasting.

IX. WORKFORCE HOUSING

Applicant shall make a one-time \$500 contribution per market-rate dwelling constructed at the Property to the Loudoun County Housing Trust Fund for the purpose of assisting qualified applicants with a household income of between 0% and 100% of the Washington Area Median Income purchase homes in Loudoun County. This contribution shall be made prior to or concurrent with the issuance of each zoning permit for a market-rate residential unit.

X. GARAGE SPACE CONVERSION RESTRICTION

Prior to the approval of the first record plat at the Property, the Applicant shall record a restrictive covenant against the Property, as part of the applicable HOA documents, that prohibits the conversion of any garage space in a single-family attached unit to any other use that would

prevent or preclude the use of the garage for the storage of vehicles.

XI. ENTRANCE FEATURES

Applicant shall enhance the project entry (that is in the vicinity of where Trefoil Land enters the Property) that may include such items as project identification signs, enhanced landscape treatment, or special paving materials. The Applicant reserves the right to determine the final entry design features at final engineering during the site plan process.

XII. CONSTRUCTION TRAFFIC

All construction-related traffic will access the site from Trefoil Lane.

XIII. OPEN SPACE PRESERVATION

Once zoning permits for eighty-eight (88) residential units at the Property have been issued, the Applicant shall make a one-time per unit contribution of \$117.34 prior to or concurrent with the issuance of each additional residential zoning permit.

XIV. ESCALATOR

Unless otherwise specified, all cash contributions enumerated in these proffers shall be subject to an annual escalator based on the CPI with a base year of 2007. This escalator shall take effect on January 1 of 2008 and change effective each January 1 thereafter.

Owner/Applicant

LOUDOUN RESERVE L.C.
a Limited Corporation

By: _____(SEAL)

Name: _____

Title: _____

STATE OF _____)

) to-wit:

COUNTY/CITY OF _____)

The foregoing Proffer Statement was acknowledged before me this _____ day of _____, 2007, by _____ as _____ of Loudoun Reserve L.C.

Notary Public

My Commission Expires: _____

Owner/Applicant

SMITH LOUDOUN L.C.
a Limited Corporation

By: _____(SEAL)

Name: _____

Title: _____

STATE OF _____)

) to-wit:

COUNTY/CITY OF _____)

The foregoing Proffer Statement was acknowledged before me this _____ day of _____, 2007, by _____ as _____ of Smith Loudoun L.C.

Notary Public

My Commission Expires: _____

EXHIBIT A

ZONING ORDINANCE MODIFICATIONS

PD-H6 DISTRICT SIZE MODIFICATION

Zoning Ordinance Requirements to be Modified

"Section 4-102. Size and Location. A PD-H district, when mapped, shall be no less than fifty (50) acres in size for a PD-H3, no less than twenty five (25) in size for a PD-H 4, and a PD-H 6 district. Smaller parcels that are adjacent to and a logical extension of an approved PD-H district may be approved pursuant to 6-1500. Land may be rezoned to the PD-H district where consistent with the provisions of the residential elements of the Comprehensive Plan."

Proposed Modification: The Applicant requests that the 25 acre minimum for a PD-H6 zoning district be eliminated to permit this approximately 24.95-acre PD-H district, administered as R-8.

R-8 AND PD-H6- MINIMUM BUFFER MODIFICATION

Zoning Ordinance Requirements to be Modified

"Section 3-509(C) A permanent common open space buffer of fifty (50) feet in depth with a Category 2 Buffer Yard shall be provided where a development adjoins an existing or planned residential district, land bay or development which has a minimum of allowable lot size of 6,000 square feet or greater. Such buffer area may be included in open space calculations."

Zoning Ordinance Requirements to be Modified

"Section 4-109(C) Uses adjacent to single-family, agricultural, or residential districts or land bays allowing residential uses. Where residential uses in a PD-H district adjoin a single-family residential, agricultural, or residential district or land bay allowing residential uses, or a commercially zoned development approved subject to proffers prior to adoption of this ordinance, the development shall provide for either:

...

- (2) A permanent open space buffer along such perimeter at least fifty (50) feet in width, landscaped with a Type 2 Buffer Yard."*

Proposed Modification

The Applicant requests a reduction in the required common open space from 50 feet to a minimum of 10 feet. Applicant also seeks to reduce the required Type 2 buffer yard to a Type 1 buffer yard. This reduction is specifically requested on the eastern edge of the Property, adjacent to Crown Alley and on the northeastern edge of the Property adjacent to vacant residentially zoned land.

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PD-H EXTERNAL RELATIONSHIPS MODIFICATION

Zoning Ordinance Requirements to be Modified

"Section 4-109(E) Height limitations at edges of PD-H districts. Except along boundaries where adjoining districts permit greater heights within similar areas, height limitations shall be limited to an imaginary plane leaning inward from district boundaries at an angle representing an increase in height of one (1) foot for every two (2) feet of horizontal distance perpendicular to the district boundary. No portion of any building in such district shall project through said imaginary line.

Proposed Modification

The Applicant requests that specific units on the eastern edge of the Property, adjacent to Crown Alley and on the northeastern edge of the Property adjacent to vacant land are permitted to cross through the imaginary building line.

EXHIBIT B

THE TOWNES AT AUTUMN OAKS

CONCEPT DEVELOPMENT PLAN

EXHIBIT C

THE TOWNES AT AUTUMN OAKS

OAKGROVE ROAD – PROPOSED IMPROVEMENTS STUDY